

1 (b) Receive from the debtor and disburse to a creditor
2 any money or other thing of value.

3 (3) "Person" means any individual, corporation,
4 partnership, trust, association, or other legal entity.

5 (4) "Credit counseling agency" means any organization
6 providing debt management services or credit counseling
7 services.

8 817.802 Unlawful fees and costs.--

9 (1) It is unlawful for any person, while engaging in
10 debt management services or credit counseling services, to
11 charge or accept from a debtor, directly or indirectly, a fee
12 or contribution greater than \$50 for the initial setup or
13 initial consultation. Subsequently, the person may not charge
14 or accept a fee or contribution from a debtor greater than
15 \$120 per year for additional consultations or, alternatively,
16 if debt management services as defined in s. 817.801(2)(b) are
17 provided, the person may charge the greater of 7.5 percent of
18 the amount paid monthly by the debtor to the person or \$35 per
19 month.

20 (2) No provision of this section prohibits any person,
21 while engaging in debt management or credit counseling
22 services, from imposing upon and receiving from a debtor a
23 reasonable and separate charge or fee for insufficient funds
24 transactions.

25 817.803 Exceptions.--Nothing in this part applies to:

26 (1) Any debt management or credit counseling services
27 provided in the practice of law in this state;

28 (2) Any person who engages in debt adjustment to
29 adjust the indebtedness owed to such person; or

30 (3) The following entities or their subsidiaries:

31 (a) The Federal National Mortgage Association;

1 (b) The Federal Home Loan Mortgage Corporation;
2 (c) The Florida Housing Finance Corporation, a public
3 corporation created in s. 420.504; or
4 (d) A bank, bank holding company, trust company,
5 savings and loan association, credit union, credit card bank,
6 or savings bank that is regulated and supervised by the Office
7 of the Comptroller of the Currency, the Office of Thrift
8 Supervision, the Federal Reserve, the Federal Deposit
9 Insurance Corporation, the National Credit Union
10 Administration, or the Department of Financial Services.
11 817.804 Requirements; disclosure and financial
12 reporting.--
13 (1) Any person engaged in debt management services or
14 credit counseling services shall:
15 (a) Obtain from a certified public accountant licensed
16 under s. 473.308 an annual audit of all accounts of such
17 person in which the funds of debtors are deposited and from
18 which payments are made to creditors on behalf of debtors.
19 (b) Obtain and maintain at all times insurance
20 coverage for employee dishonesty, depositor's forgery, and
21 computer fraud. The insurance coverage must be in an amount
22 not less than the greater of \$100,000 or 10 percent of the
23 monthly average of the aggregate amount of all deposits made
24 for distribution to creditors with such person by all debtors
25 for the 6 months immediately preceding the date of initial
26 application for or renewal of the insurance. The deductible
27 on such coverage shall not exceed 10 percent of the face
28 amount of the policy coverage.
29 (2) A copy of the annual audit and insurance policies
30 required by this section shall be available for public
31 inspection at each branch location. Copies shall be provided,

1 upon written request, to any party requesting a copy for a
2 charge not to exceed the cost of the reproduction of
3 documents.

4 817.805 Disbursement of funds.--Any person engaged in
5 debt management or credit counseling services shall disburse
6 to the appropriate creditors all funds received from a debtor,
7 less any fees permitted by s. 817.802, within 30 days after
8 receipt of such funds. Further, any person engaged in such
9 services shall maintain a separate trust account for the
10 receipt of any funds from each debtor and the disbursement of
11 such funds on behalf of such debtor.

12 817.806 Violations.--

13 (1) Any person who violates any provision of this part
14 commits an unfair or deceptive trade practice as defined in
15 part II of chapter 501. Violators shall be subject to the
16 penalties and remedies provided therein. Further, any consumer
17 injured by a violation of this part may bring an action for
18 recovery of damages. Judgment shall be entered for actual
19 damages, but in no case less than the amount paid by the
20 consumer to the credit counseling agency, plus reasonable
21 attorney's fees and costs.

22 (2) Any person who violates any provision of this part
23 commits a felony of the third degree, punishable as provided
24 in s. 775.082 or s. 775.083.

25 Section 2. This act shall take effect July 1, 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 2682

The committee substitute: (1) revises the definition of credit counseling agency to include debt management services; (2) provides that the section requiring a debt management service or credit counseling service to obtain insurance coverage and undergo an annual audit applies to any person engaged in debt management or credit counseling services; (3) removes reference to a fidelity bond and provides that a debt management or credit counseling service must obtain insurance coverage for employee dishonesty, depositor's forgery, and computer fraud in an amount not less than the greater of \$100,000 or 10 percent of the monthly average of the aggregate amount of all deposits made for distribution to creditors with such person by all debtors for the 6 months immediately preceding the date of initial application for or renewal of the insurance; (4) removes the requirement that the insurance policy be issued by a company rated at least "A-," and removes the requirement that the policy provide 30 days' advance written notice of termination of the policy; (5) creates a separate section on violations, in which it states that a violation of any provision of this part is a violation of the Florida Deceptive and Unfair Trade Practices Act, and also provides that any person who violates any provision of this part commits a third-degree felony; and (6) changes the effective date to July 1, 2004.